

# EXHIBIT A

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

NESTLE PURINA PETCARE COMPANY, )  
 )  
Plaintiff, )  
 )  
v. )  
 ) No 4:14-CV-859 RWS  
BLUE BUFFALO COMPANY, LTD., )  
 )  
Defendant. )

MOTION HEARING  
BEFORE THE HONORABLE RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE  
OCTOBER 22, 2014

APPEARANCES:

For Plaintiff: Richard M. Assmus, Esq.  
MAYER BROWN LLP  
71 S. Wacker Drive  
Chicago, IL 60606

David A. Roodman, Esq.  
Emma C. Harty, Esq.  
BRYAN CAVE LLP  
211 North Broadway, Suite 3600  
St. Louis, MO 63102

For Defendant: Steven A. Zalesin, Esq.  
Adeel A. Mangi, Esq.  
PATTERSON AND BELKNAP  
1133 Avenue of the Americas  
New York, NY 10036

(Appearances continued on Page 2)

REPORTED BY: SHANNON L. WHITE, RMR, CRR, CSR, CCR  
Official Court Reporter  
United States District Court  
111 South Tenth Street, Third Floor  
St. Louis, MO 63102  
(314) 244-7966

PRODUCED BY COURT REPORTER COMPUTER-AIDED TRANSCRIPTION

Appearances Cont'd:

For Defendant: David H. Luce, Esq.  
CARMODY MACDONALD P.C.  
120 South Central, Suite 1800  
Clayton, MO 63105

Robert A. Atkins, Esq.  
PAUL AND WEISS  
1285 Avenue of the Americas  
New York, NY 10019

1 say on this, maybe it opens that door, but we're not there,  
2 and it's my understanding that we won't be there.

3 THE COURT: Well, that's where I remain. Here's  
4 the -- since you don't come to St. Louis often and certainly  
5 haven't spent much time with me, the good news and the bad  
6 news about me is I'm willing to be persuaded I should revisit  
7 an issue.

8 And you all know judges who once they make up their  
9 mind, don't come back, but I think, you know, a better view is  
10 if you are persuaded that you should revisit an issue, you  
11 should revisit it. And there may be an occasion where this  
12 changes over the course of this lawsuit.

13 And it's kind of like even -- I'm not -- I never  
14 bifurcate discovery, but certainly the staging of discovery  
15 can have an impact on how well it's accomplished. And we may  
16 get there, but I don't think we're there now given the state  
17 of the pleadings in this case, which is what I was kind of  
18 telegraphing before.

19 So I don't want to encourage you to every month say,  
20 no, no, we need to talk about it again, that will be  
21 counterproductive, but there may be a point in this case where  
22 this issue needs to be revisited, and I'm happy to revisit it.  
23 So it's never -- until we go to trial, it's never permanently  
24 closed.

25 Yes, sir?

1 case.

2 Blue Buffalo argues on relevance maybe halfheartedly,  
3 but they also raise an issue of admissibility under Federal  
4 Rule of Evidence 404. In particular, they suggest that it's  
5 inadmissible evidence of prior bad acts.

6 Your Honor, in our view, you can't apply Rule 404 to  
7 an entire category of documents that we don't even know what  
8 they are yet. If it applied at all, which we don't agree to,  
9 it might apply to the decisions, but it certainly would not  
10 apply to filings in the case that may have admissions that  
11 would be valuable to Purina, internal communications about the  
12 decision that likewise might have admissions.

13 So for those reasons, Your Honor, we think all the  
14 documents that Purina requested with respect to the two NAD  
15 decisions, both the 2008 one about the "feed them like family"  
16 claim and 2014 one about the True Blue Test, and the very same  
17 ads that are at issue here all should be produced.

18 Your Honor, I'm happy to pause there for --

19 THE COURT: Yeah. Why don't we take them up one at a  
20 time.

21 MR. MANGI: Your Honor, I'd like to make one  
22 introductory point that will relate not just to the NAD but in  
23 fact to every category on which Purina moves to compel. When  
24 you read Nestle Purina's complaint, its first amended  
25 complaint is what we're up to now, it is absolutely clear and

1     apparent that their case is about one issue: They're alleging  
2     that our product had poultry by-product meal in it when, in  
3     fact, we said that it didn't.

4             And if you take an expansive view of their complaint,  
5     there are a few other claims that they particularize to some  
6     degree, saying that there's also some corn in there that we  
7     say there isn't and they say Dr. Makowski found, and they say  
8     our grain-free products have some rice hulls in there that Dr.  
9     Makowski found, and then there's an allegation about these  
10    nutrients in the LifeSource bits.

11            But the core and the heart of it is all about that  
12    by-product meal, and every other claim that they challenge  
13    ultimately comes down to and is based on and is derivative of  
14    that claim relating to by-product meal.

15            I'll give you just one example. They have claims  
16    that they say, well, look, we have challenged the fact that  
17    Blue Buffalo says they have only the finest natural  
18    ingredients and no artificial preservatives. So we think  
19    every ingredient that they have, every issue they've ever had  
20    in the past at the NAD or otherwise, everything is fair game.

21            But when you go to the complaint, what do they  
22    actually say about that issue? They say, "Blue Buffalo's  
23    statements and promises that its products contain only the  
24    finest natural ingredients and have no artificial  
25    preservatives are false and misleading because, among other

1 congruity on the issues where there is none. It's simply not  
2 about those topics, these fish meals and so on.

3 Now, the 2014 NAD proceeding again is not about these  
4 issues. There the main issue is whether competitors of Blue  
5 Buffalo, the big pet food conglomerates, concealing their use  
6 of by-product meal, whether they're concealing it in terms of  
7 what they do and claims we are making about that. That's not  
8 at issue here.

9 And while there were aspects of the True Blue Test,  
10 which is a comparison tool that appeared on our website that  
11 were at issue there, it's completely different. Again, here  
12 they say your True Blue Test comparison -- it's false because  
13 you say you don't have by-product meal and you actually do.

14 In the NAD proceeding, what they were saying is,  
15 well, that claim is false because your disclaimer is unclear  
16 enough, the color and the appearance of the check marks is not  
17 clear enough, you're speaking in absolutes about things that  
18 should be more qualified -- completely different conceptual  
19 issues from an advertising perspective.

20 Now, that's relevance, and we think that ultimately  
21 is dispositive, but it is worth noting that our other  
22 arguments relating to Federal Rule of Evidence 404(b) and  
23 indeed Rule 407 to the extent they try to get into changes  
24 that were made after the NAD proceedings, our argument is not  
25 that you should be making a decision about admissibility here.

1 Of course not. Our argument is simply that when you are  
2 assessing whether or not their discovery is reasonably  
3 designed to get to admissible evidence and reasonably  
4 calculated to that end, what should factor in is not just  
5 relevance but also the fact that then there is hurdle after  
6 hurdle after hurdle that they cannot surmount to use even the  
7 NAD decision itself let alone all documents talking about the  
8 NAD proceedings, which is what they're seeking here.

9           Ultimately, their goal with all of this, Your Honor,  
10 is clear from the complaint. It's clear from petfoodhonesty,  
11 which is the smear website they set up accusing us of  
12 dishonesty which we have sued them over. They talk about  
13 these NAD proceedings because they're trying to say, well,  
14 Blue Buffalo is a bad actor. They're serial false  
15 advertisers. You shouldn't believe anything they say.

16           It's the definition of what's ultimately going to be  
17 inadmissible, and the decisions themselves are hearsay.

18           So our view, Your Honor, is this is complete  
19 irrelevant material, a frolic and detour; that if we're going  
20 to stay focused on the issues in this case, by-product meal,  
21 let's do that, and this should be excluded.

22           THE COURT: All right. It's my finding that there's  
23 not sufficient overlap between the NAD proceedings and  
24 documents and the claims as they're firmly stated in this case  
25 to permit discovery of the background documents on those



1 proceedings, and I'm going to deny the motion to compel.

2 Then we have -- you have four more categories we need  
3 to go over.

4 MR. ASSMUS: Yes. Thank you, Your Honor.

5 The next category is -- relates to Blue Buffalo's  
6 ownership. It's the one I'd like to take next.

7 THE COURT: Okay.

8 MR. ASSMUS: And what we've asked here is a  
9 relatively narrower request for documents sufficient to  
10 reflect their ownership structure and their owners. And  
11 they've put this at issue in a number of ways in the  
12 advertising we challenge.

13 One of those ways is they talk about the big-name  
14 companies; so they put Purina's size in contrast to their own  
15 size. They've also done that in the many statements that Bill  
16 Bishop has made -- that's their founder -- on its website in  
17 response to this lawsuit, calling Purina a "bully," calling it  
18 a "Goliath," et cetera. And for those reasons we asked for  
19 relatively limited discovery into their owners: Who they are  
20 and how much they own.

21 In addition, they have also used that in their  
22 pleadings, talking about the motivation for the suit. And we  
23 believe, Your Honor, that given the relatively narrow nature  
24 of these requests for ownership information and the way that  
25 they've put this at issue both in the challenge claims and in